

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALICIA STREET, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:19-cv-2590 CDP
)	
LT.COL. LAWRENCE O'TOOLE, et al.,)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS
AUBUCHON et al. (ADD-ON DEFENDANTS)**

Defendants Lt. Scott Aubuchon and 41 other defendants were added to the amended complaint at ¶11. These "add-on defendants" include supervisors and line officers.

The addition of these "add-on defendants" is of a piece with plaintiffs' tactic of legal "kettling" of police officers suspected of involvement in the allegedly illegal conduct of St. Louis police officers on the night of September 17, 2017. Other defendants include the City of St. Louis itself (the employer of all named defendants at the time), its acting police commissioner, its acting director of public safety, the incident commander, supervisors of the rank of sergeant and above, and a host of ordinary line officers. Motions to dismiss have been or will be filed on behalf of all groups of defendants. Because the claims against each group involve differing issues, each motion to dismiss has been supported by a separate memorandum. In order to avoid needless duplication of effort, these "add-on defendants" adopt the arguments in support of all other motions to dismiss to the extent applicable. In summary, these defendants submit that the claims against them should be dismissed for the following reasons:

1. Conspiracy claims under 42 U.S.C. §1983 against these defendants, all employees of the City, are barred by the intracorporate conspiracy doctrine. In any event, defendants are qualifiedly immune to the conspiracy claims in this case due to the unsettled state of the law under §1983 with regard to intracorporate conspiracy. *Ziglar v. Abbasi*, 137 S.Ct. 1843 (2017).

2. The amended complaint fails to state a claim for deprivation of federally protected rights against these defendants because no personal involvement of these defendants in any deprivation is shown by the facts (not conclusions) pleaded, and similarly no facts are alleged to show tacit collaboration in any constitutional violations. *White v. Jackson*, 865 F.3d 1064 (8th Cir. 2017).

3. These defendants are qualifiedly immune to the claims of illegal arrest and excessive force because the defendants could reasonably believe that there was at least arguable probable cause for plaintiffs' arrest and that no more than *de minimis* force, not amounting to a Fourth Amendment violation, was utilized in arresting plaintiffs. *Bernini v. City of St. Paul*, 665 F.3d 997 (8th Cir. 2012); see also *Robinson v. Hawkins*, 937 F.3d 1128 (8th Cir. 2019).

4. The state law claims alleged are defective for lack of allegations of personal involvement by these defendants in any state law tort, and are also defective for lack of allegations of other essential elements of abuse of process, false arrest or imprisonment, malicious prosecution, infliction of emotional distress, conversion or conspiracy. As to conspiracy, Missouri law applies the intracorporate conspiracy doctrine. Moreover, plaintiffs' state law claims are barred by official immunity. See Mo.Rev.Stat. §563.046, §563.074; *Copeland v. Wicks*, 468 S.W.3d 886 (Mo.banc 2015); *State ex rel. John Deere Co. v. Short*, 378 S.W.2d 496 (Mo. 1964).

WHEREFORE the "add-on" defendants submit that plaintiff's amended complaint, counts I-V, and VII-XIV should be dismissed, together with an award of costs and attorney's fees.

Respectfully submitted,

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